

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04--11958-RGS

MARTIN J. GALVIN, JR., ED.D,)
Plaintiff)
VS.)
)
THE TOWN OF YARMOUTH,)
PETER L. CARNES AND STEVEN XIARHOS)
Defendants)

TOWN OF YARMOUTH'S ASSENTED-TO MOTION
FOR LEAVE TO AMEND ITS ANSWER

Individual Defendants Peter L. Carnes and Steven Xiarhos hereby move for leave to amend their answer to the complaint filed against them by Martin J. Galvin. Carnes and Xiarhos seek to assert the affirmative defense of qualified immunity afforded to them by the laws of the United States and the Commonwealth of Massachusetts. As reasons therefore, Carnes and Xiarhos state the following grounds:

1. The Court's leave to amend a pleading "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a).
2. Chief Carnes and Lieutenant Xiarhos seek to add a meritorious affirmative defense essential to the protection of their rights under the laws of the United States and the Commonwealth of Massachusetts.
3. The plaintiff assents to this amendment. No party will be prejudiced by the allowance of this Motion, as discovery has not concluded and a trial date has not been scheduled.
4. Because this proposed amendment neither harasses the Plaintiff nor causes him any prejudice, this Court would not abuse its discretion in

granting this motion to amend the answer of defendants Carnes and Xiarhos.

See Carmona v. Toledo, 215 F.3d 124, 136 (1st Cir. 2000).

WHEREFORE, defendants Carnes and Xiarhos hereby move for leave to amend their answer to the complaint filed by Galvin in order to assert the affirmative defense of qualified immunity afforded to them by the laws of the United States and the Commonwealth of Massachusetts. Carnes and Xiarhos file herewith their First Amended Answer to Plaintiff Galvin's complaint.

Respectfully Submitted,
Defendants,
By their attorney,

/s/ Thomas P. Campbell
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Dated: October 4, 2005

L.R. 7.1 CERTIFICATION

I hereby certify that on Monday, October 3, I spoke with counsel for the plaintiff after faxing him a draft version of this motion. He assented to the motion. Therefore, I believe that I have complied with the requirements of Local Rule 7.1.

/s/ Thomas P. Campbell
Thomas P. Campbell, BBO #564124